

**DETAILED ACTION**

**NEW REJECTIONS**

***Specification***

1. The amendment filed July 7, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The phrase 'having no ethylene/vinyl alcohol copolymer' is not in the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26 – 37, 39 – 42, 51 – 52, 54 – 58, 60 – 62, 64 – 69, 71 and 74 – 83 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase 'having no ethylene/vinyl alcohol copolymer' is not in the original disclosure.

4. Claims 26 – 37, 39 – 42, 51 – 52, 54 – 58, 60 – 62, 64 – 69, 71 and 74 – 83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'is consisting of' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be interpreted to mean 'is,' rather than 'consisting of.'

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 26, 40, 67, 78 and 81 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason et al (U.S. Patent No. 4,950,515).

With regard to Claims 26, 78 and 81, Mason et al disclose a thermoplastic composite comprising multiple layers (column 6, lines 9 – 17) comprising a mixture of different polyamides homopolymers (column 2, lines 50 – 58) and ethylene vinyl alcohol copolymer, which is a compatibilizer (column 4, lines 9 – 11); the composite is a hollow body having a hollow inner space (container; column 6, line 20); Mason et al therefore disclose an inner layer comprising a mixture of different polyamide homopolymers and a compatibilizer which is adjacent to and defines an inner space, an intermediate layer comprising ethylene vinyl alcohol copolymer and an outer layer comprising a mixture of different polyamide homopolymers and a compatibilizer; the compatibility, which is facilitated by the compatibilizer, is evidenced by

impact strength (column 4, lines 33 - 35); the compatibilizer disclosed by Mason et al is therefore an impact strength modifier.

With regard to Claims 40 and 67, Mason et al disclose a compatibilizer in the range of 10% by weight (column 2, line 10).

***Claim Rejections – 35 USC § 103(a)***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 27 - 39, 41 - 42, 51 - 52, 54 - 58, 60 - 62, 64 - 66, 68 - 77, 79 - 80 and 82 - 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al (U.S. Patent No. 4,950,515) in view of Flepp et al (U.S. Patent No. 6,555,243).

Mason et al disclose a composite comprising different polyamides as discussed above. The composite is used in the making of an article (column 4, line 51 of Mason et al). With regard to Claim 27, Mason et al fail to disclose a composite comprising polyamide 6 and polyamide 12.

Flepp et al teach the use of a mixture of polyamide 6 and polyamide 12 in a composite (column 5, lines 18 - 36) for the purpose of obtaining a composite for use in a container or hose (column 3, lines 53 - 55) that has good adhesion between layers (column 5, line 14). One of ordinary skill in the art would therefore have recognized the advantage of providing for the polyamides of Flepp et al in Mason et al, which comprises a container, depending on the desired adhesion of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the mixture of Flepp et al in Mason et al in order to obtain good adhesion as taught by Flepp et al.

With regard to Claims 28 - 29, 33 - 42, 51 - 52, 54 - 58, 60 - 62 and 64 - 74, the mixture taught by Flepp et al comprises 25 - 80% by weight of polyamide 6 (column 5, lines 60 - 63), which is within the range of 40 - 60% (2:3 to 3:2) and 40 - 50% (2:3 to 1:1) by weight of polyamide 6 in Claims 33 and 34 of the instant invention, respectively; Flepp et al. also disclose the use of rubbers for impact strength modifiers in the polyamide molding compositions (column 6, lines 33-37); the acid-modified ethylene/olefins copolymers used as an impact strength modifier, can also be used as a compatibilizer (column 6, lines 50 - 56); the impact modifiers have elastomer fractions (column 6, lines 40-43); also disclosed by reference is the use of copolyamide 6/12 to decrease stress cracking; Flepp et al also teach having antistatic agents added so that composite becomes electrically conductive (column 6, lines 13 - 17); additional additives such as pigments (column 6, line 67), stabilizers (column 7, line 1), reinforcement agents (column 7, line 1), and flame retardants (column 7, line 1) can also be added; Flepp et al also discloses the addition of layered silicates (col. 7, line 10) to increase strength, strain at break, and other mechanical properties (column 7, lines 12-14)

With regard to Claims 30 - 32, the applicant is introducing process limitations to the product claim, hence, the process claim is given little patentable weight due to the fact that the patentability of a product does not depend on its method of production.

With regard to Claims 75 - 77, the applicant is introducing the intended use of the thermoplastic multilayer composite; the limitations directed to intended use as a fuel line and

filler neck for a fuel tank are given little patentable weight. It is noted that Flepp et al teach a fuel line (column 7, lines 62) and therefore inherently discloses a filler neck for a fuel tank.

#### ANSWERS TO APPLICANT'S ARGUMENTS

9. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 26 - 39, 41 - 42, 51 - 52, 54 - 58, 60 - 62, 64 - 66, 68 - 71, and 74 - 83 as being anticipated by Flepp et al (U.S. Patent No. 6,555,243), of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new rejections above are directed to amended Claims 26 - 42, 51 - 52, 54 - 58, 60 - 62 and 64 - 83.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794